City and County of Denver

OFFICE OF TELECOMMUNICATIONS
303 WEST COLFAX AVENUE, SUITE 850
DENVER, COLORADO 80204-2624
(303) 640-2845
FAX: (303) 640-7028

June 3, 1996

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Dear Mr. Caton:

The enclosed is submitted on behalf of the City and County of Denver, Colorado ("City") to be included as part of the Comments sought by the Federal Communications Commission in its Notice of Proposed Rulemaking, CS Docket No. 96-85. The City's Comments pertain to the critical need for viable effective competition standards, a realistic OVS operator affiliate definition and significant local review and involvement concerning technical standards.

The original and eleven (11) copies are enclosed. Please contact me at the above address and telephone number if additional information is needed to properly evaluate the enclosed materials.

Sincerely,

Dean Smits
Director, Office of Telecommunications

cc: Cable Services Bureau
International Transcription Services, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Cable Act	)	CS Docket No. 96-85
Reform Provisions of The	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE CITY AND COUNTY OF DENVER, COLORADO

Alonzo Matthews
Manager
General Services Administration

City and County of Denver
1330 Fox Street
2nd Floor
Denver, CO 80204

Deborah L. Ortega
President
City Council

Cathy Reynolds
City Councilwoman and
Chair, Special Projects Committee

City and County of Denver
City and County Building
Denver, CO 80202

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of Cable Act Reform Provisions of The Telecommunications Act of 1996	)	CS Docket No. 96-85

COMMENTS OF THE CITY AND COUNTY OF DENVER, COLORADO

I. SUMMARY AND INTRODUCTION

On April 9, 1996, the Federal Communications Commission ("FCC" or "Commission") released its Notice of Proposed Rulemaking in CS Docket No. 96-85 ("Cable Act Reform NPRM") which requests comments on implementing the provisions in the Telecommunications Act of 1996 ("1996 Act") that pertain to, among other issues, effective competition test elements germane to local exchange carrier ("LEC")-delivered programming; the definition of "affiliate" in the context of open video systems ("OVS"); and local franchising authority ("LFA") involvement in technical standards review, evaluation and enforcement activities. The City and County of Denver, Colorado ("City") firmly believes that all effective competition tests must exhibit viable thresholds to ensure that subscribers have competitive choices before certain local regulation diminishes. This means that an effective competition test pertaining to LEC-delivered programming must have as one of its elements a viable pass rate and penetration rate, and must include non-broadcast services as part of any programming lineup that is considered comparable to cable television system programming. Additionally, the City believes that the Title VI definition of "affiliate" should be used to determine affiliation between a LEC and the OVS-based cable service provider

that they own. To not use the Title VI definition would create a scenario where competing cable service providers would inherently be treated differently, thereby negatively impacting the viability of multichannel video competition. The City further believes, and supports in detail in the following Comments, that local governments must continue to have an integral role in reviewing, evaluating and enforcing technical standards and system technical considerations, especially as such issues may affect the franchising and franchise renewal process.

The City is an interested party in this proceeding for several reasons. First, the City is the franchising authority for Denver and, as such, is involved in both complaint resolution and technical issues. The system is large and has presented technical challenges over the years. Over 244,660 City and County of Denver homes are passed by the City's cable television franchisee, Mile High Cable Partners, L.P., d.b.a. TCI of Colorado, Inc. ("TCI"). Over 109,400 of these homes subscribe to cable television. Denver has exhibited the expertise and has worked cooperatively with TCI throughout the franchise term to successfully resolve technical complaints and problems.

Second, on June 14, 1996, the City is set to begin renewal proceedings concerning TCI's Denver system. As such, what the Commission decides in its ultimate Cable Act Reform rulemakings concerning cities' abilities to review, analyze and incorporate technical considerations in the franchising and refranchising process will significantly affect how the City is able to ensure that TCI meets the future Denver community needs and interests.

Third, the current LEC serving the City, US West, has been active in pursuing video dialtone ("VDT") operations. At one time, US West had applied to the FCC to provide VDT service to portions of the City. It is quite conceivable that US West may pursue OVS

operations and that Denver could be one of the near-future OVS roll-out areas. Accordingly, what the Commission determines related to effective competition and affiliation standards as they pertain to LEC-delivered video programming will significantly affect the City's ability to ensure that the competitive and public benefits of OVS (such as Public, Educational and Governmental access programming) are provided to the citizens of Denver.

II. DISCUSSION

The City believes that the following concepts must be incorporated into the Commission's final Cable Act Reform rules in order to ensure that the public interest is properly served.

A. The Effective Competition Test Pertaining To LEC-Delivered Video Programming Must Ensure A Significant Competitive Choice For Existing Cable Subscribers

The Commission requests Comments on several facets of the 1996 Act's new, fourth effective competition test related to LEC-delivered multichannel video programming. Two of these facets are the meaning of "comparable" programming and whether a percentage pass or penetration rate should be applied as part of the fourth test. First, the City believes that Congress intended that LEC-delivered programming only be considered comparable to that of the cable operator when it includes both broadcast and non-broadcast services. While the 1996 Act Conference Report ("Conference Report") does focus on the inclusion of "at least some" television broadcasting signals in the definition of comparable programming,[1] the conferees also give clear indication that non-broadcast services should be included by referencing the Commission's rules at 47 CFR 76.905(g).

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[1] See Conference Report at 170.

This perspective also comports with how subscribers view the comparability of programming when surveying choices in the multichannel video programming marketplace. Analysis of subscribers' viewing habits indicates that a large percentage of cable subscribers purchase cable television service in order to view non-broadcast services and that, once subscribing, spend a large percentage of their viewing time watching non-broadcast channels. In light of this, it is evident that subscribers will not deem competition provided by LEC-delivered means truly "effective" unless a significant percentage of available programming is non-broadcast, consistent with their viewing needs.

Second, the Commission requests Comments on whether the fourth effective competition test should include a percentage pass rate and/or penetration rate component. The City believes, again, for competition provided by LEC-delivered programming to be realistically competitive, that such competition must include the pass and penetration rates consistent with those for programming services offered by other multichannel video programming distributors ("MVPD's"). Since Congress did not remove the pass rate for the other three effective competition tests or the penetration rate for the non-franchising authority based MVPD's, establishing a fourth test without such pass and penetration rates would automatically create an inconsistent and unequal structure for determining the effectiveness of various competitors. Such inconsistent and unequal treatment could conceivably set up a situation where the same programming service offered in different franchise areas would be deemed to provide effective competition in one franchise area if delivered by a LEC, but not be deemed to provide effective competition in another franchise area if delivered by another type of MVPD. Certainly Congress did not intend for some cable subscribers to have regulated rates while other subscribers would have no controls on

rates, even though they may have the same competitive programming choices. Consequently, the City believes that LEC-delivered multichannel video programming must be subject to the fifty percent (50%) pass rate and fifteen percent (15%) penetration rate that currently constitutes effective competition as provided by other MVPD's. To do less, as indicated above, could significantly disadvantage large groups of cable subscribers.

Additionally, taken to its extreme, without such a pass rate test, effective competition could be claimed in a franchise area served by an LEC-based MVPD that actually represented no competition at all. For instance, a cable operator could claim that it was subject to effective competition from an LEC that had simply instituted an initial system roll-out (conceivably even a field trial) for as little as two subscribers. Again, such a scenario would significantly disadvantage subscribers throughout the entire franchise area because none beyond those targeted in the initial roll-out would be able to access the "competition" provided by means of the LEC. Based on what Congress could not have intended in establishing the fourth competition test, it is up to the FCC to apply the pass and penetration rate tests applicable to other MVPD's to ensure that cable subscribers are not disadvantaged by ineffective competition.

B. The Title VI Definition Of "Affiliate" Should Be Used To Determine Ownership Interest Of An LEC In Its OVS-Based Cable Service Provider

The Commission requests Comments on the definition of "affiliate" in the context of open video systems. The City strongly believes that Congress did not intend for more than one definition of "affiliate" to be used as it regards the provision of cable service, regardless of whether such service is provided by a cable operator or an LEC over an open video system. Thus, for example, to incorporate the new Title I definition for "affiliate" as part

of the OVS rules would not recognize Congressional intent and would treat competing cable service providers dissimilarly, thereby creating unequal regulatory treatment on both a federal and local level. Such a disparity ultimately could affect the viability of competing cable services and the types and amounts of benefits that they provide the public.

The Commission should also not assume that it has the discretion[2] in this instance to add a percentage of ownership interest to the federally-developed Title VI affiliation standard. Congress' clear intent in this regard was that any ownership interest constituted an affiliation between the cable service provider and another entity.

C. The FCC Must Continue To Allow LFA's To Review, Evaluate And Enforce Technical Standards And System Technical Considerations

1. The 1996 Act does not diminish the requirement for the FCC's technical standards.

A plain reading of the 1996 Act indicates that Congress intended for cable television technical standards to continue in force and effect when it left intact the requirement that the Commission prescribe "minimum technical standards relating to cable systems' technical operation and signal quality."[3] Therefore, some entity must enforce these federally mandated standards. The experience of LFA's, to this point the primary enforcer of CATV technical standards, shows that conscientious enforcement of such standards has resolved numerous consumer complaints, noticeably improved system picture quality and, correspondingly, improved cable system operations. Conversely, left unchecked, some systems have performed in a substandard manner, and experience indicates that such systems have not improved in the absence of a regulatory mandate or any effective competitive

[2] See Cable Act Reform Order at 16.

[3] See 47 U.S.C. 544(e).

threat. Logically then, in what is still, by all accounts, mostly a non-competitive environment for video programming delivery, system technical quality will deteriorate without ardent enforcement of minimum standards.

The City firmly believes that Congress intended for franchising authorities to continue to be the primary enforcers of CATV technical standards, even though it modified the 1992 Act language pertaining to enforcement provisions that "A franchising authority may require as part of a franchise."[4] The reasonable interpretation of Congress' intent is that it simply may have desired that the Commission, as the developer of national CATV standards, should have the flexibility to also develop, if necessary, national uniform guidelines under which LFA's would continue to be the primary enforcer of such standards. (As discussed below, the successful technical problem resolution experience of LFA's and cable operators to date indicates that national guidelines are, in fact, not necessary.) If Congress wished to take a stance directly against LFA involvement in the enforcement of technical standards, it would have, for example, proactively inserted the word "not" after the word "may".

It is important to look historically at how LFA's became the primary enforcers of cable television technical standards. First, beginning in July 1990, in its Cable Report to Congress[5], the Commission stated to Congress that it, as a practical matter, will continue to rely on local franchising authorities as the first line of enforcement. The Commission also noted at that time that there were significant ongoing discussions between the cable industry and LFA's to reach a consensus agreement on viable CATV technical standards.

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[4] See Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"), Section 624(e).

[5] See Report in MM Docket No. 89-600, 5 FCC Rcd 4962 (1990) ("Cable Report").

Subsequently, the Commission issued an NPRM in its technical standards proceeding on June 27, 1991.[6] In that NPRM, the Commission "proposed requirements for proof-of-performance testing, and also for resolving complaints **primarily at the local level**, involving the Commission only in the case of intractable problems that cannot be resolved locally."[7] Representatives from LFA's and the cable industry reached consensus and filed a joint agreement on October 17, 1991, in response to the Commission's NPRM that concurred with the Commission's emphasis on local resolution of technical standards issues. In the Report and Order issued pursuant to all the prior discussions, negotiations and proposed rulemakings, the Commission concretely encompassed the concept of local enforcement of its national standards, stating, "Because local authorities are most familiar with the local system operation and plant, as well as any local factors which would affect the resolution of a problem, initial enforcement of our technical standards will generally take place at the local level."[8]

There are several important points that can be gleaned from analysis of this historic data. First, the Commission instituted the concept of local enforcement of its rules prior to Congress specifically enabling such an LFA role in the 1992 Cable Act. This means that there did not have to be a federal legislative enablement for the FCC to adopt this critically important concept in its rules. Second, the fact that local authorities are best suited to enforce technical standards has not changed, regardless of Congress' current passive attitude

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[6] See Notice of Proposed Rulemaking in MM Docket Nos. 91-169 and 85-38, 6 FCC Rcd 3673 (1991).

[7] See Report and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992) at 7 (emphasis added).

[8] Id. at 12.

towards local enforcement. LFA's are still "most familiar" with their local cable system and the many "local factors" which affect problem resolution. Therefore, the impetus and rationale for local enforcement has not changed. Third, it is clear that just a scant few years ago, the cable industry was all for enforcement of national technical standards at the local level. Since that time, countless LFA's and cable operators have worked together to successfully resolve numerous signal quality problems. This record of success indicates that there is no credible reason for the cable industry to now change its position on this issue, and thus the Commission should ensure the continuation of this successful local resolution process.

It is evident that today, as even well before the Commission adopted its 1992 rules, there is a significant need for local governments to have the primary, "first-line" role in enforcement of technical standards. As the Commission has long noted, it has "in the past referred complaints concerning service quality to local authorities for resolution, and this practice resulted in the disposition of the vast majority of such complaints."[9] LFA's are the natural focus for technical standards enforcement. They are expected to be responsive to cable subscribers for the resolution of all cable-related problems, because they directly oversee the franchise, and they are the line of government that is closest to the people.

Based on all of the above, local governments have a longstanding successful history of complaint resolution concerning technical standards and thus have gained significant experience and expertise in this area. As an example, the City recently conducted a successful nationwide search for the purpose of hiring a new Director for its Office of

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[9] See Report and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992) at 81.

Telecommunications. The newly appointed Director has extensive experience in coordinating technical inspections and re-inspections on behalf of local governments, most recently with the City of Wheaton, Illinois ("Wheaton"). The intent is to implement those same technical inspection procedures during the course of upcoming renewal proceedings in the City and County of Denver. The elements of the technical inspection process as experienced by Wheaton, under the direction of the City of Denver's new Director of Telecommunications, provides an important case study that specifically demonstrates the validity of the City's positions in these Comments.

The City of Wheaton conducted a technical inspection of its cable system during the spring of 1993. Prior to this, the cable operator had conducted a proof-of-performance test that indicated compliance with the FCC's 1992 rules. The City's inspection included the assessment of compliance with FCC technical standards as defined at 47 CFR, Section 76, Subpart K. Specifically, it included random test point distribution system tests such as:

- Visual (picture signal) carrier levels on each activated channel
- Aural (sound signal) carrier levels on each activated channel
- Peak-to-Valley on the entire band of activated channels (sweep response test)
- Highest to lowest video carrier differential on the entire band of activated channels
- Carrier-to-Noise ratio measurement
- Low frequency distortion ("Hum")
- 2nd/3rd order distortion
- RF signal leakage assessment

Signal quality measurements were conducted at the cable system's headend as well.

The results of the technical inspection revealed that the subscriber and institutional network systems were not performing at an acceptable level of compliance with existing FCC rules and local franchise requirements. The single largest issue was that the system was not being maintained adequately, and as a whole was operating far below what it should based on its design and construction. The system was found to be basically sound, and the problems were found to be mostly adjustment in nature. The problems did, however, impact signal quality dramatically.

System construction was also evaluated for compliance with National Electrical Safety Code (NESC) and National Electric Code (NEC) requirements. System wide, it was estimated that approximately 1,000 NESC construction-related violations existed and that nearly 30% of all subscriber drops appeared not to be grounded properly.

There was an acknowledgment and consensus of opinion among the cable operator's technical staff, both at the local and corporate level, that the system had failed various FCC parameters at various test points; and concurrence that the system as a whole was operating far below what it should based on its design and construction. It is important to note that the operator acknowledged the substandard operation of the system, even though it had successfully completed its required FCC proof-of-performance just prior to the City's inspection. This indicates that without Wheaton's proactive stance concerning technical standards enforcement, Wheaton subscribers would not have experienced the improvements in picture quality and system operation that they ultimately received.

The operator was officially notified and provided with a reasonable opportunity and time period to cure the problems. The operator implemented some immediate corrective

action measures as a result of the inspection. A Corrective Action Plan was agreed to by both parties to resolve the problems in a reasonable time period.

At a subsequent date, a re-inspection of the system was conducted in an effort to ascertain whether the cable operator had fully implemented the corrective action measures mutually agreed upon. In general, the re-inspection demonstrated that the signal quality issues had for the most part been effectively addressed and resolved. However, the physical plant issues remained essentially unchanged. Basically these issues pertained to two areas: repair or wreck-out of plant that violated construction requirements of the NESC, and proper grounding of drops to subscribers' homes in accordance with the NESC. These findings indicated that essential public safety issues needed to be addressed. Again, the operator was duly notified and a mutually agreed upon updated Corrective Action Plan was implemented. To date, the City of Wheaton has continued, and will continue in the future, to exercise careful oversight of the technical quality of the cable system to protect the interests of its citizens.

The efforts described above were initiated, funded and coordinated by a local government. The actions identified a cable system being in noncompliance with numerous FCC rules and regulations, provisions of the NESC and NEC, and provisions within the cable franchise agreement. Mutually agreed upon corrective action measures addressed these circumstances and resulted in the cable system coming into compliance with the violations as described. Signal quality improvement was realized by subscribers, and a mutually agreed upon cable plant maintenance program was implemented.

In fact, the cable operator modified its internal technical testing procedures on a national level as a result of the Wheaton experience. The City had insisted upon utilization

of random test points during the audit process. The operator had previously performed fixed test point inspections. Corporate level technical staff participating in the process as previously described concluded that fixed test points were not accurately reflecting the true operational characteristics of the system and that random test points were more accurate indicators of total system signal quality.

As a practical matter, the FCC will likely not have the manpower required to properly enforce its technical standards on a system-by-system basis. Experience indicates that LFA's were involved in literally thousands of enforcement actions, like those in Wheaton, concerning technical standards, since the FCC's technical standards were adopted in 1992. These actions resulted in the resolution of numerous subscriber complaints and resulted in significantly improved picture quality. Such an outcome would not have been possible without the consistent and continual involvement of numerous LFA's. This successful outcome thus could not be duplicated by the Commission without a significant, dedicated increase in FCC technical standards enforcement manpower, funding and other resources. As true now, as it was back in 1992, is the Commission's belief that its "resources will be best spent addressing intractable systemic reception problems brought to our attention by local franchising authorities."[10]

Also, as a practical matter and as noted in more detail in the next section, LFA's must have a consistent and continual involvement and knowledge of local system performance in order to adequately judge current and past technical quality and project

[10] See Report and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992) at 82.

future system technical capabilities. This integral, continual involvement is critical to fulfilling the LFA's requirements under the renewal provisions of the Cable Acts.

Finally, as also discussed earlier, Congress did not act to specifically prohibit LFA's from being involved in the technical standards review and enforcement process. Simply, all Congress did in the 1996 Act is act to keep certain technical standards **development** at the federal level. Accordingly, while the Commission continues to remain the focus of the institution and refinement of cable television technical standards, LFA's should continue to remain the focus of the enforcement of such standards.

2. The 1996 Act does not diminish the requirement for LFA's to ensure adequate technical system performance and characteristics in new and renewed franchises.

As the FCC correctly noted in the Cable Act Reform NPRM, Congress left all of the Cable Acts' renewal provisions intact.[11] These provisions continue to place a significant responsibility on the shoulders of local governments. First, local governments must be able, for renewal and new franchise purposes, to consider, judge and ensure the quality of an operator's service, including signal quality. This cannot be done effectively throughout the duration of the franchise, or in judging an applicant's performance in other franchises, unless the LFA is able to evaluate signal quality over a period of time, against standards that have been enforced at the local level.

It is important to state again that the quality of an operator's service goes beyond the quality of minimum sound and picture components to technical issues such as system reliability and electrical code compliance. For example, the quality of the operator's service may be affected by an inordinate number of system outages which could be resolved by a

[11] See Cable Act Reform NPRM at 104.

more extensive implementation of standby power supplies. Additionally, as noted in the Wheaton example, system grounding problems are typically resolved by more strict compliance with local building codes and the national standards found in the National Electric Code and the National Electrical Safety Code. Both of these elements are typically enforced at the local level, and requirements related to reliability and grounding standards are typically established in local ordinances. This local enforcement component has worked well in the past in ensuring these facets of an operator's quality of service and thus should continue to be seated at the local level.

Further, another part of the quality of an operator's service is the operator's responsiveness to consumer complaints and to system technical problems. Enforcement of technical standards at the local level, as the Commission has already noted, helps ensure a satisfactory resolution to such consumer complaints and problems.

As an example of the importance of the above factors, the City anticipates the commencement of formal franchise renewal proceedings with its present cable operator later this month. The City is preparing to conduct a technical inspection and review of the cable system as part of that process. The technical evaluations to be made are intended to assess the cable system's compliance with franchise provisions, FCC Rules and Regulations, OSHA standards, and the NEC and NESC. It will also assess the operator's responsiveness to signal quality complaints and problems, and this latest technical assessment will be compared to the findings in earlier reviews.

It is important for the FCC to note that Denver and numerous other local governments have experience in these matters and have committed funds, expertise, and resources to facilitate such technical inspections. It also should be noted that these

inspections are generally conducted by LFA's, and will be conducted by Denver, in a manner which fosters a spirit of professional cooperation between the LFA and the cable operator so that resident cable subscribers are the primary beneficiaries of the process. The City's position is that it is of paramount importance that both parties, the LFA and the cable operator, work cooperatively for the benefit of the citizens being served and whose interests are being represented.

As a second element necessary to properly facilitate the franchising and refranchising process, local governments must be able to evaluate the quality and viability of an operator's system upgrade proposals. Technical evaluation, as it relates to an operator's future system plan, is an extremely important part of the franchising and renewal process for a variety of reasons. For instance, upgrade proposals often are evaluated in light of their ability to resolve longstanding system technical concerns. For example, if the use of microwave hub-to-hub interconnects have resulted in a number of degradation and system outage situations due to rain-fade, then the upgrade proposal would need to incorporate another type of interconnect technology, such as fiber optic supertrunking, in order to resolve that concern.

Additionally, system technical upgrades must be evaluated by local governments in light of their ability to assist the operator in meeting the future cable-related needs and interests of the local community. As an example, if a community needs assessment and ascertainment study indicates a significant need to provide programming targeted at specific homes (such as video on demand), then the local government would need to be able to evaluate whether the proposed technical architecture could provide such targeted services. Additionally, certain types of technical architectures may be needed to improve system performance above minimum standards (such as the inclusion of fiber optic transmission

deeper into the neighborhood than currently may exist or may initially be proposed). Further, the community needs assessment may indicate a significant need for more types of cable services, which may correspondingly require an expanded system capacity. The LFA then would have to evaluate whether the proposed system bandwidth would accommodate the expanded capacity needs.

Some in the cable industry have already argued that the 1996 Act prohibits LFA's from mandating specific system transmission technologies or subscriber terminal equipment. While the City does not agree with this view, there should be no debate that a plain reading of the statute clearly indicates that Congress did not restrict an LFA's ability to evaluate an operator's proposed transmission technologies or subscriber equipment as part of an upgrade plan, in light of that technology's or equipment's ability to meet the future community needs. Accordingly, regardless of how the FCC ultimately views the question of mandates, it must act to support LFA's in their ability to evaluate and review system transmission technologies and subscriber equipment, if the Commission's rules are to comport with Congress' clear intent not to alter the renewal sections of the prior Cable Acts.

As the Commission has noted, a third facet of the interrelationship between LFA's technical standards, technology and franchise renewal is that local governments must have adequate assurance that the cable operator has the existing and future technical qualifications to provide cable services that meet future community needs. This assurance comes from a combination of LFA review, analysis, evaluation and enforcement activities, all of which must continue to be enabled by the Commission in order for LFA's to meet their responsibilities under Section 626 of the Cable Act. Specifically, LFA's must be able to evaluate and judge past system technical performance, including responsiveness to

consumer complaints and standards enforcement actions, and LFA's must be able to evaluate and judge future system technical makeup, including proposed system architectures and system technological components.

3. The 1996 Act does not diminish the requirement for the FCC to update its cable technical quality standards, and apply necessary standards to competing providers.

In its restructuring of the Cable Act's sections pertaining to technical standards, Congress left intact the requirement for the Commission to update its standards periodically to reflect improvements in technology. At this point, most would agree that multichannel video delivery systems are experiencing rapid improvements in technology. Therefore, the City firmly believes that, as part of its overall response on the technical standards issue, the Commission must begin to look at updating its standards to be consistent with changes in the technological landscape. For example, as more and more cable systems incorporate fiber optic transmission technology deeper into their system architectures, it is clear that a carrier-to-noise ratio beyond 43 db is easily obtainable for such systems. Therefore, an upgrade in this specification appears to be necessary and would be much more consistent with home subscribers' viewing expectations.

Additionally, the Commission is not prohibited by Congress and is, in fact, inherently required by the nature of system architectures being proposed for other types of cable service (such as cable service provided through an Open Video System) to adopt critical standards (such as signal leakage requirements and emergency alert system requirements) for emerging multichannel video service providers. The City firmly believes that the Commission should address such issues at the present time.

III. CONCLUSION

In summary, the City firmly believes that Congress' intent and its public interest goals pertaining to the 1996 Act's Cable Act Reform provisions will not be met unless the FCC incorporates the following concepts into its rules:

- The effective competition test pertaining to LEC-delivered video programming must ensure a significant competitive choice for existing cable subscribers.
- The Title VI definition of "affiliate" should be used to determine ownership interest of an LEC in OVS-based cable service providers.
- The FCC must continue to allow LFA's to review, evaluate and enforce technical standards and system technical considerations.

Respectfully Submitted,

By: Alonzo R. Matthews
Alonzo Matthews
Manager
General Services Administration

City and County of Denver
1330 Fox Street
2nd Floor
Denver, CO 80204

By: Deborah L. Ortega
Deborah L. Ortega
President
City Council

By: Cathy Reynolds
Cathy Reynolds
City Councilwoman and
Chair, Special Projects Committee

City and County of Denver
City and County Building
Denver, CO 80202